

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES METCALF,

Plaintiff,

NO. CV-07-0287-EFS

V.

JERRY BRADY, DEPUTY PETRIE  
and DEPUTY MASON,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION  
TO DISMISS PURSUANT TO FED. R.  
CIV. 12(b)(6); ENTERING JUDGMENT;  
AND CLOSING FILE**

Before the Court, without oral argument, is Defendants Jerry Brady, Deputy Petrie, and Deputy Mason's Motion to Dismiss Pursuant to Fed. R. Civ. 12(b) (6). (Ct. Rec. 38.) Defendants contend the Complaint fails to state a 42 U.S.C. § 1983 claim because (1) it fails to set forth facts demonstrating that each Defendant personally caused or participated in a deprivation of Plaintiff James Metcalf's protected rights and (2) Plaintiff failed to exhaust his administrative remedies. After reviewing the submitted material and relevant authority, the Court is fully informed. For the reasons given below, the Court grants Defendants' motion.

The Prisoner Litigation Reform Act (PLRA) requires a prisoner, including a pretrial detainee, to exhaust available administrative

1 remedies prior to filing a § 1983 claim. 42 U.S.C. 1997e(a)<sup>1</sup>; *Booth v.*  
 2 *Churner*, 532 U.S. 731, 740-41 (2001). Even if the prisoner believes  
 3 pursuing an administrative remedy is futile, exhaustion is required.  
 4 *Orbriecht v. Raemisch*, 517 F.3d 489, 492 (7th Cir. 2007) (citing *Booth*,  
 5 532 U.S. at 741 n.6).

6 Plaintiff is housed at the Spokane County Jail and asserts a due  
 7 process violation in connection with a disciplinary sanction.  
 8 Washington Administrative Code chapter 137-28 addresses prison  
 9 disciplinary hearings and appeals, and, in particular, section 137-28-  
 10 300 sets forth disciplinary hearing procedures. The prisoner can appeal  
 11 the disciplinary hearing officer's decision to the superintendent. WAC  
 12 137-28-310(8); WAC 137-28-380.

13 The Complaint (Ct. Rec. 9) was unclear as to whether Plaintiff  
 14 exhausted available administrative remedies. (See Ct. Rec. 10 p. 2.)  
 15 Plaintiff's responses to the dismissal motion (Ct. Recs. 42 & 44)  
 16 clarified that he did not appeal the disciplinary hearing findings to  
 17 the superintendent because (1) Defendant Petrie advised him that he  
 18 would be unable to present witnesses, evidence, or argument during the  
 19 appeal and (2) a new hearing could not remedy the already-taken  
 20 disciplinary actions. Plaintiff therefore argues that there were no  
 21 available administrative remedies to exhaust. The Court acknowledges  
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23 <sup>1</sup> Section 1997(e) states:

24 No action shall be brought with respect to prison conditions  
 25 under section 1983 of this title, or any other Federal law, by  
 26 a prisoner confined in any jail, prison, or other correctional  
 27 facility until such administrative remedies as are available  
 28 are exhausted.

1 Plaintiff's frustration with the process; however, because Plaintiff did  
2 not appeal the disciplinary hearing findings, the Court must dismiss  
3 this action.

4 An appeal to the superintendent was still available. WAC 137-28-  
5 310(8); WAC 137-28-380; *see Brown v. Valoff*, 422 F.3d 926 (9th Cir.  
6 2005). The superintendent would have reviewed the hearing record to  
7 determine whether to affirm the hearing officer's decision, vacate the  
8 decision, or remand for a new hearing. WAC 137-28-380. Although the  
9 appeal would not have included the process Plaintiff desired, there was  
10 still a possibility that Plaintiff could obtain relief through the  
11 appeal.<sup>2</sup>

12 Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. Defendants' Motion to Dismiss Pursuant to Fed. R. Civ.  
14 12(b) (6) (**Ct. Rec. 38**) is **GRANTED**.
- 15 2. **JUDGMENT** is to be entered in Defendants' favor.
- 16 3. All pending pretrial and trial dates are **STRICKEN**.
- 17 4. This file shall be **CLOSED**.

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24       <sup>2</sup> The exhaustion requirement "allows prison officials an  
25 opportunity to resolve disputes concerning the exercise of their  
26 responsibilities before being haled into court. This has the potential  
27 to reduce the number of inmate suits, and also to improve the quality  
of suits that are filed by producing a useful administrative record."  
*Jones v. Block*, 549 U.S. 199, 204 (2007). A prison should ensure that  
its disciplinary hearing process serves these purposes.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and forward a copy to Plaintiff and counsel.

3 DATED this 3<sup>rd</sup> day of December 2008.

5 S/ Edward F. Shea  
6 EDWARD F. SHEA  
UNITED STATES DISTRICT JUDGE

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